

# Fiscal Impact of State Tort Liability

Senate Ways & Means Committee  
January 24, 2002

# What is a tort?

- A tort action is a civil lawsuit to recover damages for the breach of a legal duty.
- A typical tort is an action for damages resulting from personal injuries caused by negligence.
- A tort may be based on a common law duty or a statutory duty.

# Overview

- The history of state tort liability.
- How much do torts cost?
- How does the state pay for torts?
- How does the state defend tort actions?
- What do other states do?

# The state defends many potentially expensive lawsuits that are not torts.

## Examples of current litigation:

- Funding of K-12 salary increases under Initiative 732.
- Foster care system reform.
- Services for persons with developmental disabilities.
- Retirement contributions for part-time community college faculty.

# History of State Tort Liability

## Sovereign Immunity

- At common law, governments are immune from all lawsuits.
- Most governments have enacted statutes that waive some or all immunity from suit.

# Washington waived sovereign immunity in 1961

- State Constitution: “The legislature shall direct by law, in what manner, and in what courts, suit may be brought against the state.” (Art. 2, sec. 26)
- State Statute: “The state of Washington ... shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person.” (RCW 4.92.090)

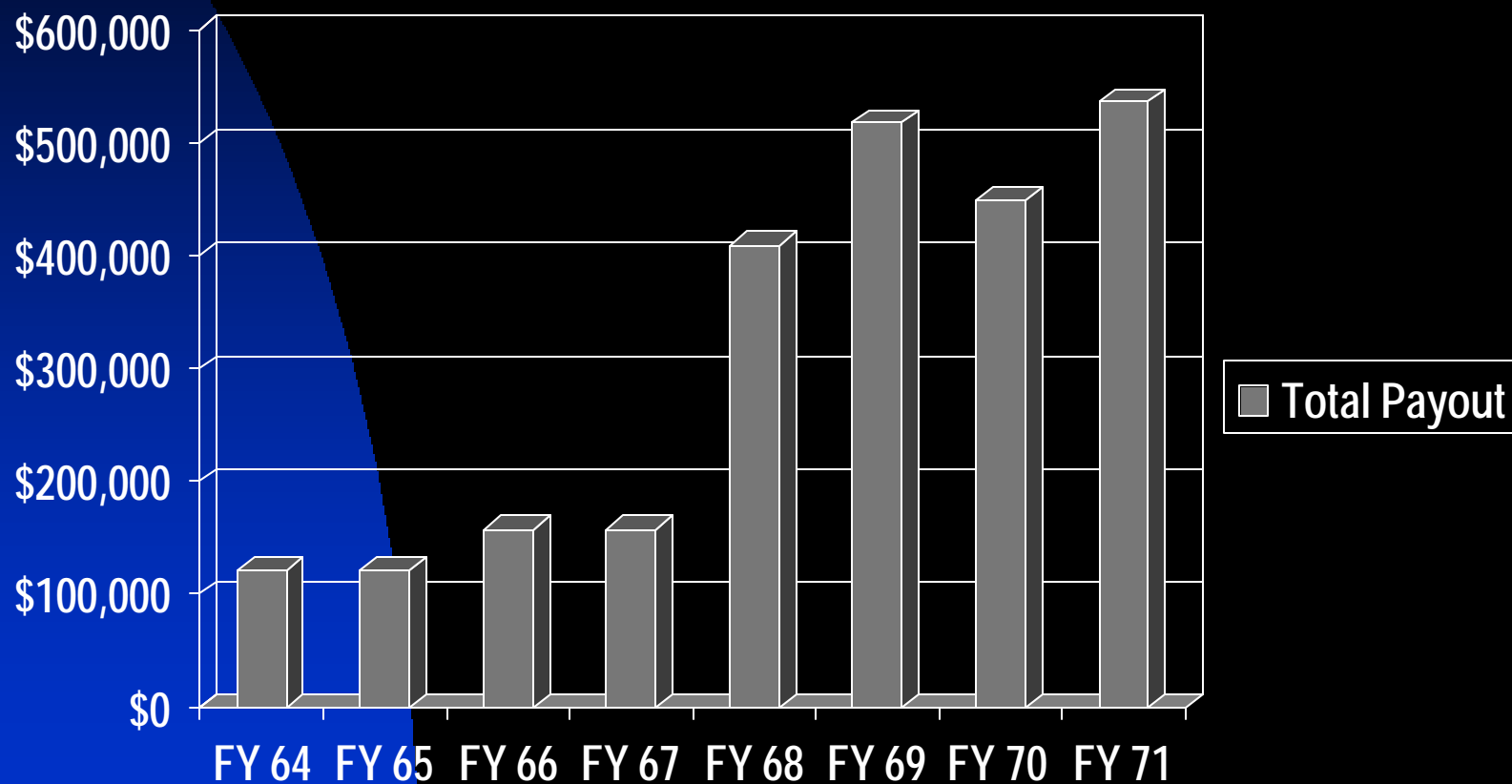
# Immunities recognized by the courts have been gradually reduced.

- 1975: High-speed police chases
- 1979: Highway design decisions
- 1983: Release of mental patients
- 1991: Child welfare programs
- 1992: Crimes by parolees
- 1997: Wrongful adoption
- 2001: Vulnerable adults

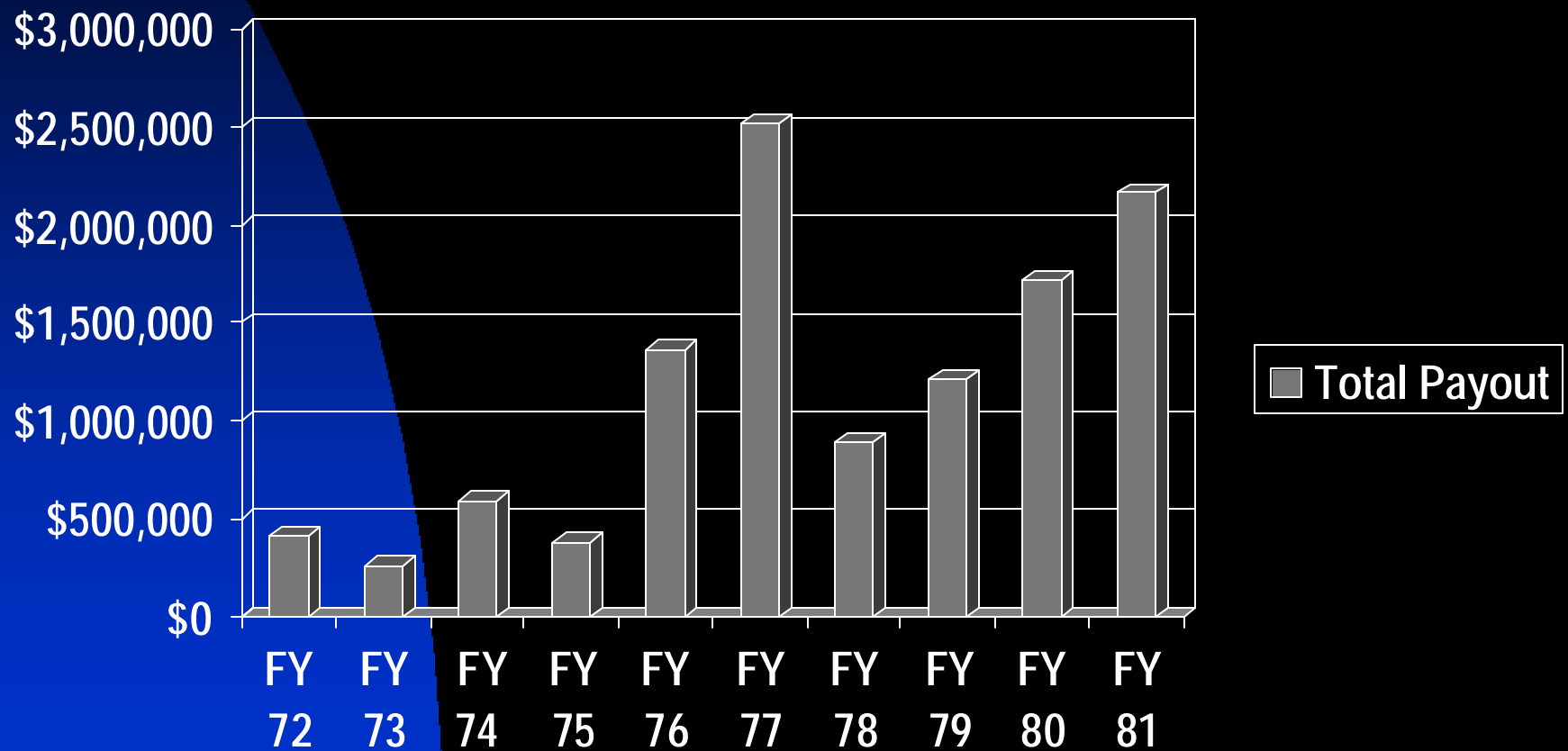
# How much do torts cost?



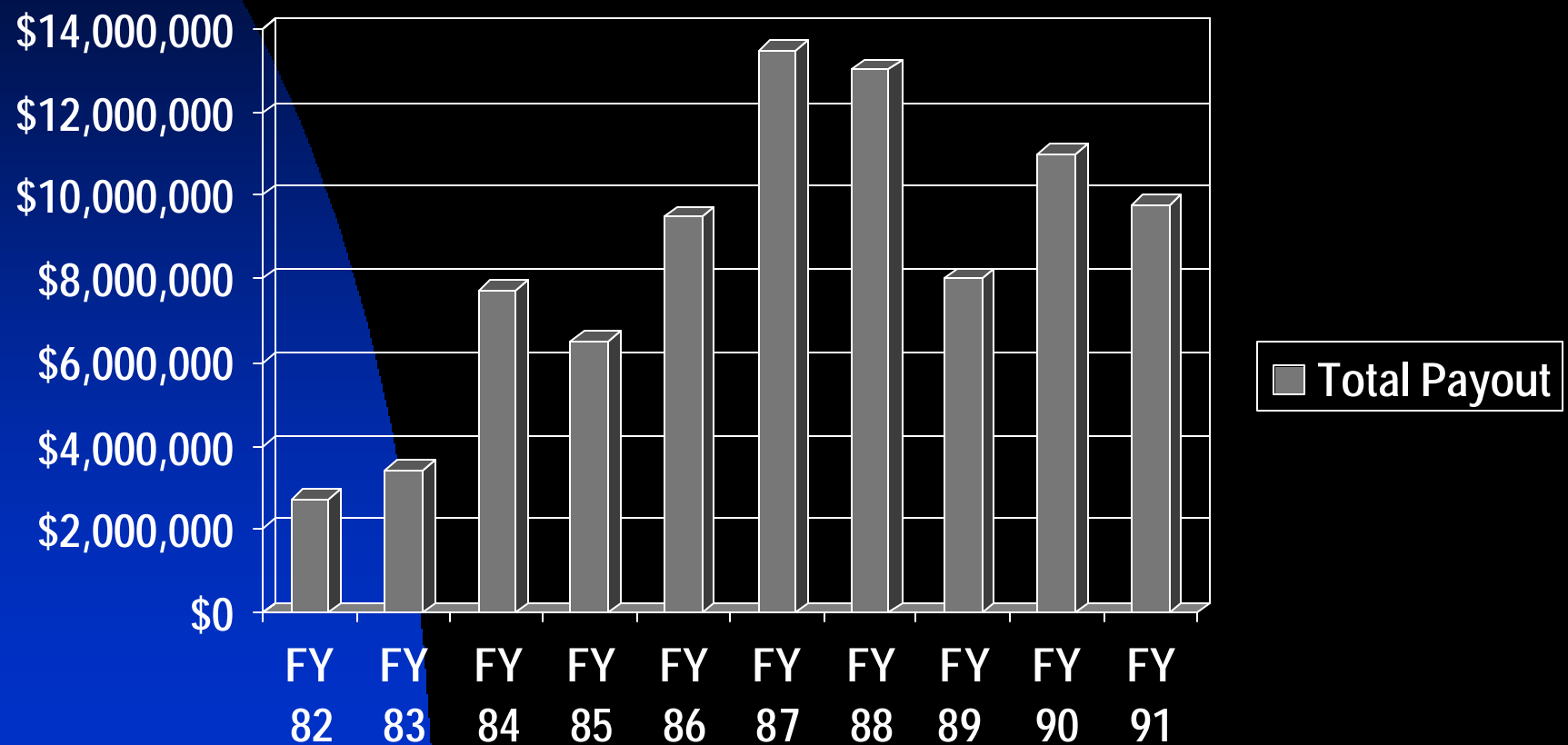
# Tort Claim Payouts 1964-1971



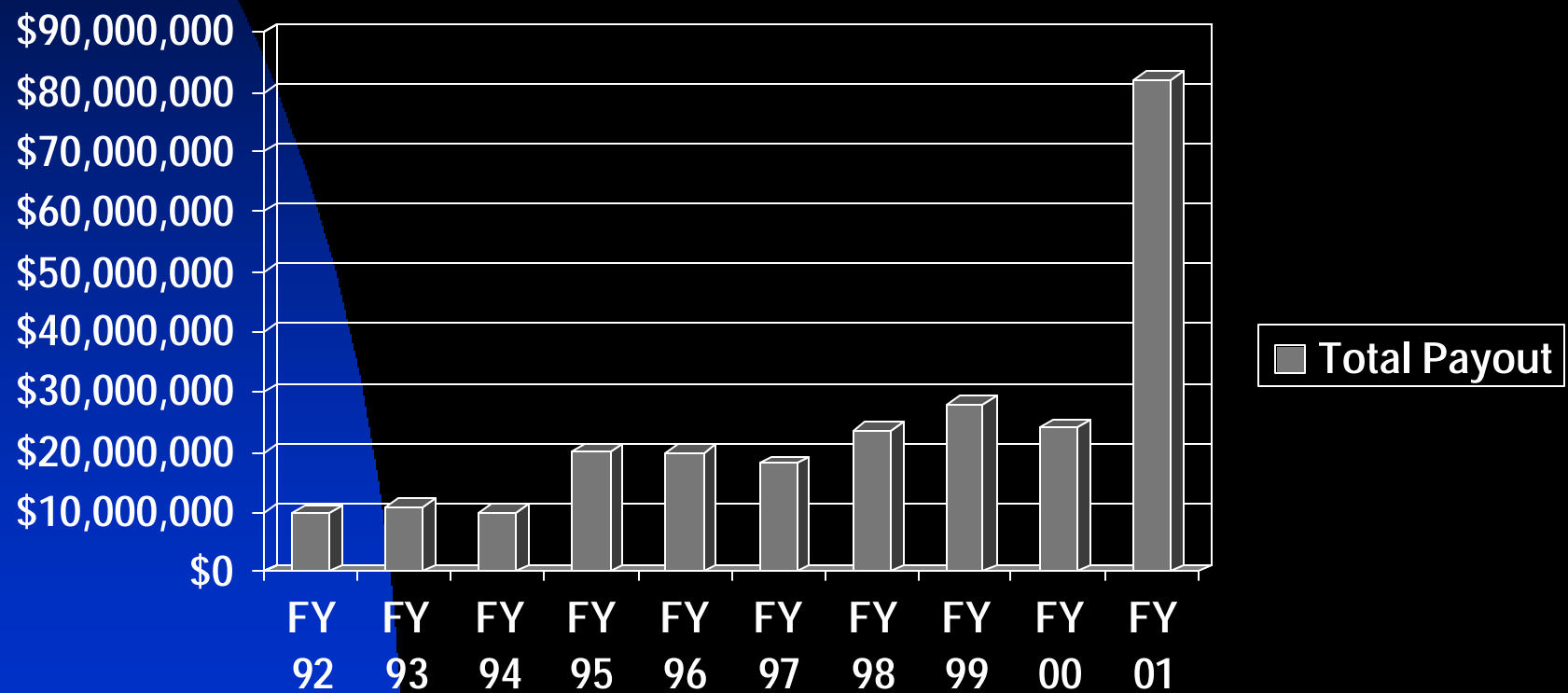
# Tort Claim Payouts 1972-1981



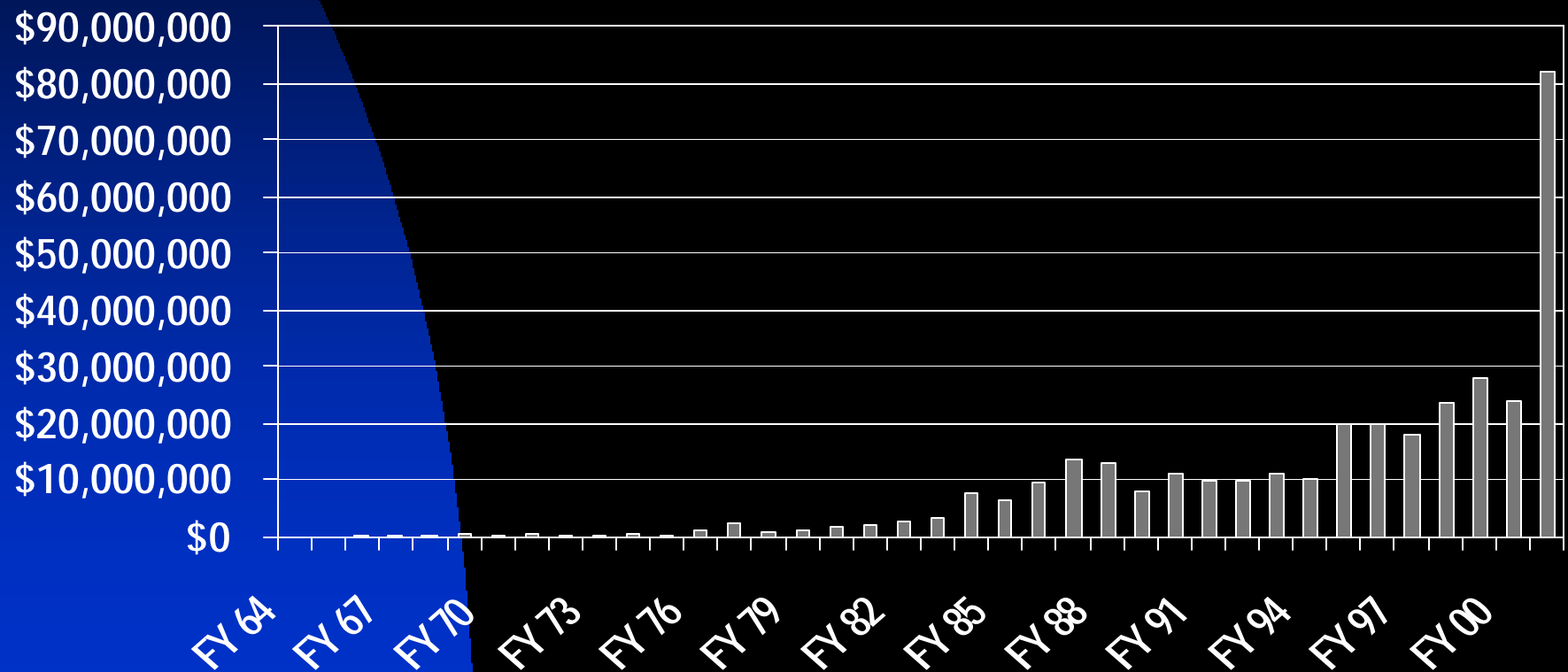
# Tort Claim Payouts 1982-1991



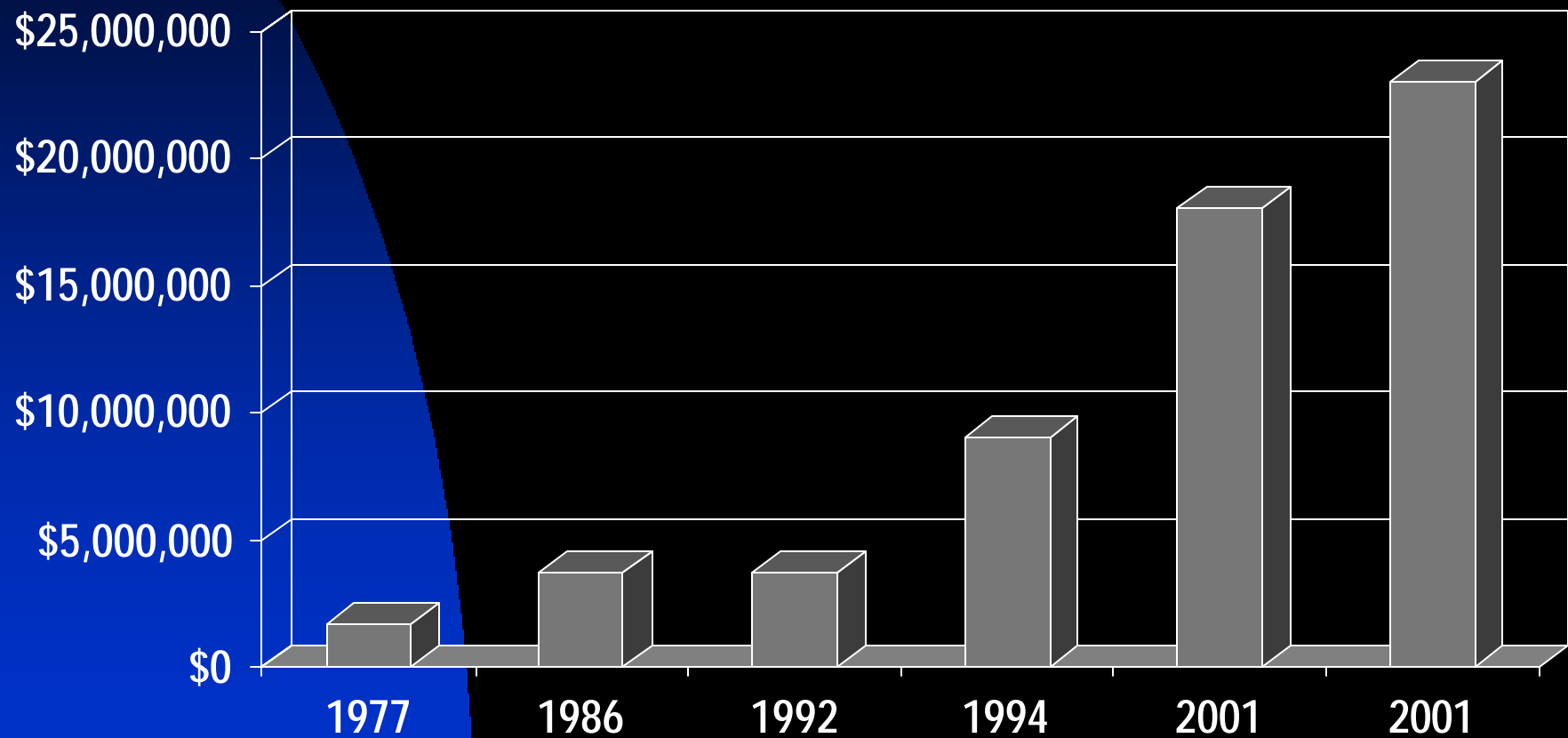
# Tort Claim Payouts 1992-2001



# Tort Claim Payouts 1964-2001



# Record Verdicts Against the State (Single Verdicts)



# How are tort damages determined?

## Three components:

- Economic damages (property loss, medical costs, lost wages, & other out-of-pocket expenses).
- Noneconomic damages (pain & suffering).
- Punitive damages (not allowed in Washington).

# What factors might contribute to increased tort costs?

- The state chooses to operate high-risk programs.
- The state is liable for conduct of persons not under direct state control.
- National trend toward higher jury awards.
- Increased litigation, particularly employment and civil rights cases.



# How Does the State Pay for Torts?

- Tort judgments and settlements are not individually appropriated.
- State agencies use budgeted funds to pay premiums to the Liability Account.
- The state also purchases limited insurance coverage.

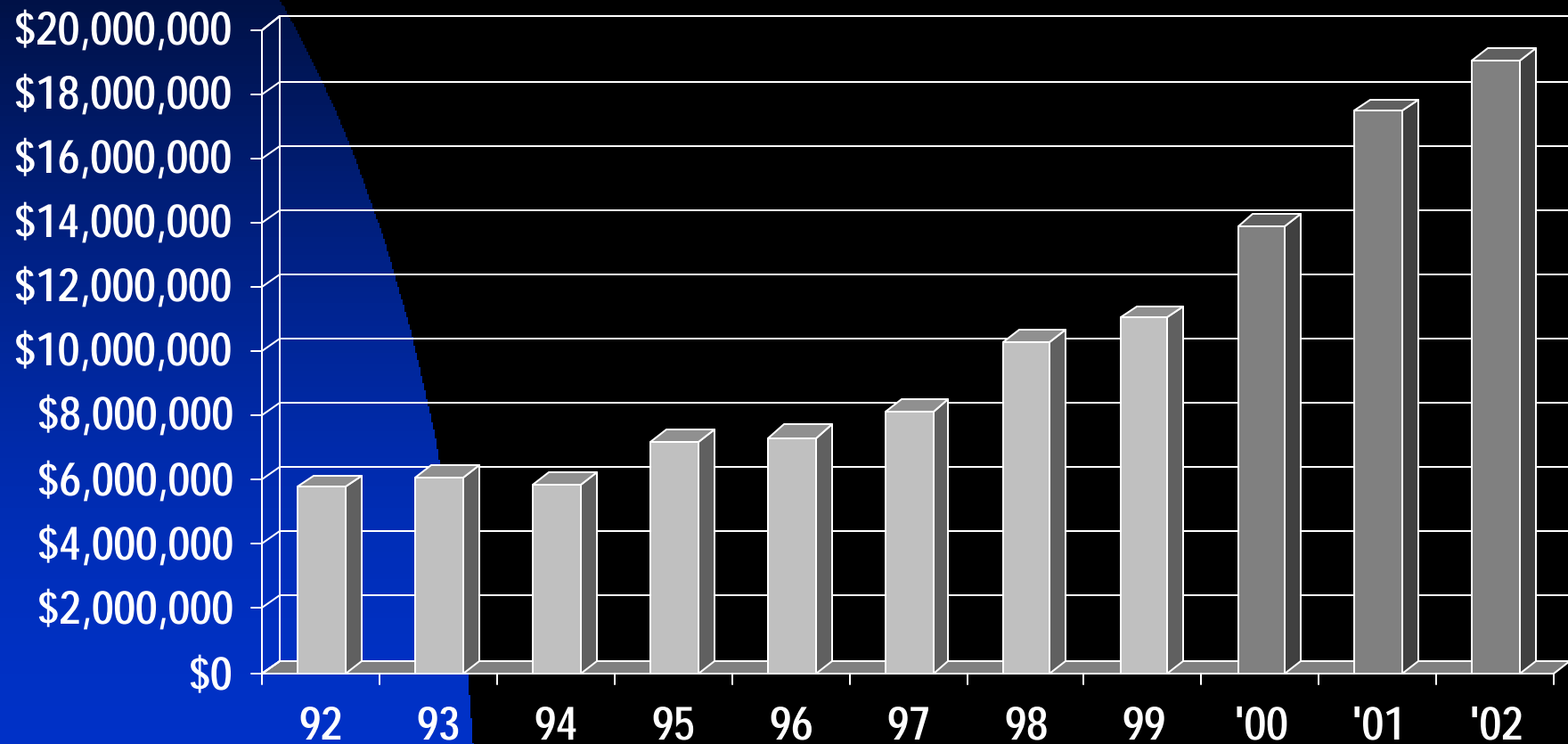
# Insurance Coverage is Shrinking

- Previous policy covered torts in excess of \$5 million per claim.
- The new policy covers DOC and DSHS torts in excess of \$25 million, and all other agencies in excess of \$15 million (per claim).

# How Does the State Pay for Legal Defense Costs?

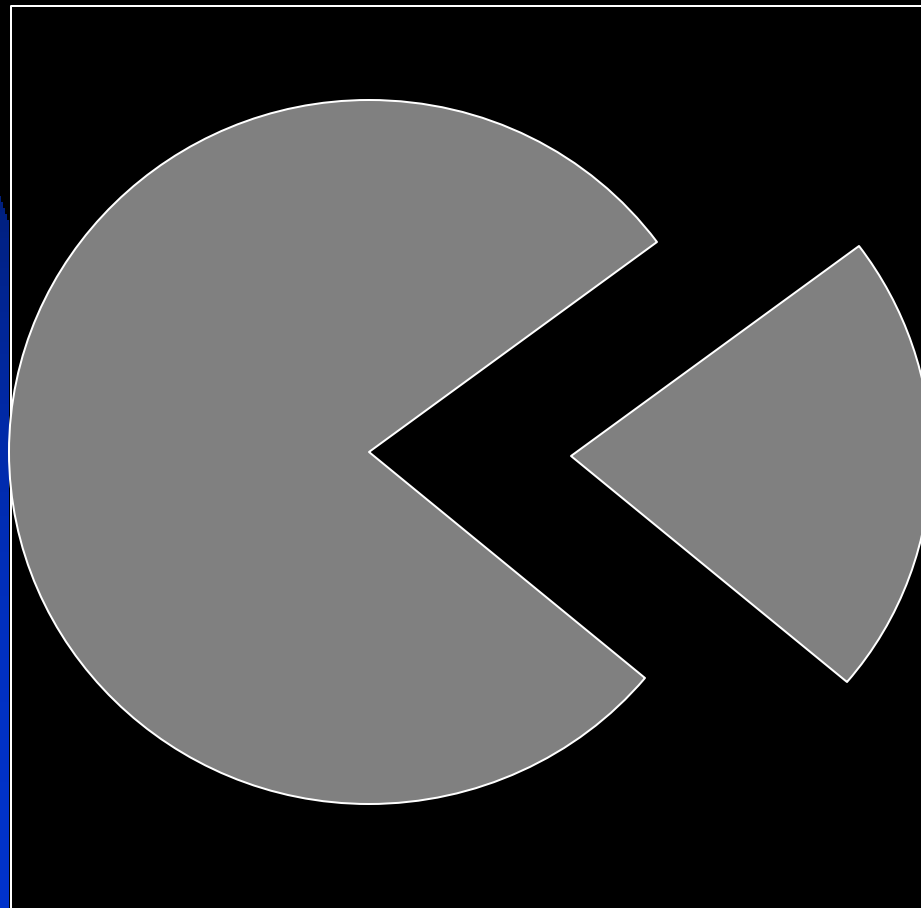
- Legal defense costs include attorneys' fees, court costs, fees for expert witnesses, etc.
- Legal defense costs are paid from the Liability Account, which is funded by agency premiums.
- Legal defense costs are not directly appropriated (1999 legislation).

# Tort Defense Costs 1992-2001



# The State Will Pay \$144 Million into the Liability Account in 2001-03 (Governor's Proposal)

Agency  
Premiums \$113  
million



Additional GF-S  
Appropriations  
\$31 million

# What do Other States Do?

- About 2/3 of the states limit the amount of damage awards against the state (caps on verdicts).
- About 4/5 of the states have total or partial immunity.
- About 4/5 of the states have immunity for parolee conduct.
- Only a few states, including Washington, have minimal immunities and no limits on damages.